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July 17, 2000

VIA HAND DELIVERY

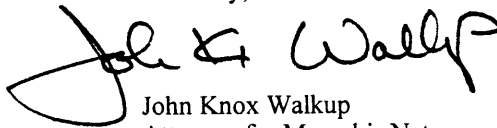
K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

RE: Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L regarding Joint Ownership of Memphis Networx, LLC; Docket No. 99-00909 - Supplemental Response to Motion to Lift Protective Order

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of Supplemental Response to Motion to Lift Protective Order of Applicant and Joint Petitioners.

Sincerely,



John Knox Walkup
Attorney for Memphis Networx, LLC
and A&L Networks-Tennessee, LLC

JKW/kms

Enclosures

cc: Parties of Record
D. Billye Sanders, Esq.
J. Maxwell Williams, Esq.
Ward Huddleston

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POSTED
7-17-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATION SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT, GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW"), A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC.)

DOCKET NO. 99-00909

**SUPPLEMENTAL RESPONSE TO
MOTION TO LIFT PROTECTIVE ORDER**

Come now MEMPHIS NETWORK, LLC ("Applicant") and MEMPHIS LIGHT, GAS AND WATER DIVISION, and A&L NETWORKS-TENNESSEE, LLC ("Joint Petitioners") and in response to the Supplement to Motion to Lift Protective Order filed at 4:00 p.m., on July 14, 2000, by Time Warner Communications of the Mid-South, Time Warner Telecommunications of the Mid-South, LP and the Tennessee Telecommunications Association (collectively "Movants") now file this Supplemental Response in support of their original Response of July 3, 2000, and their Response to the questions of Pre-hearing Officer filed on July 11, 2000, and renew their request that the Motion be denied and would state the following:

1. On April 20, 2000, the Tennessee Regulatory Authority ("TRA") entered an order providing protection to certain confidential information of all parties including the Applicant and Joint Petitioners in this matter. (A copy of the Protective Order is attached as Attachment 1).

2. The Protective Order defined "confidential information" as "documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development, financial statements or other commercially sensitive information, and which has been specifically designated by the producing party." (Protective Order at Paragraph 1).

3. The Protective Order explicitly recognized by its terms the presence in this proceeding of documents of a party that is subject to the Tennessee Public Records Act (Memphis Light, Gas and Water Division) and provided that "the 'Confidential' designation of any such document shall not affect its classification as a public record for the purposes of a public records request made pursuant to applicable procedures and state law." (Protective Order at Paragraph 10). Thousands of pages have been produced to counsel for the Intervenor pursuant to the Public Records Act.

4. On April 12, 2000, a lawsuit was filed in the Chancery Court of Shelby County, Tennessee, by Time Warner Communications of the Mid-South, L.P., one of the Movants herein, against Memphis Light, Gas and Water Division and Memphis Network. (A copy of the complaint with Exhibit 13 is attached as Attachment 2. Other exhibits are not attached, but can be supplied).

5. It appears that counsel for Time Warner Communications of the Mid-South, L.P. sought to obtain a hearing date in the Shelby County Chancery lawsuit prior to the May 1, 2000, setting of the hearing in this Tennessee Regulatory Authority proceeding (see Attachment 3) and that the filing of the Motion in this proceeding may have been the result of the fact that no such hearing had been held at that time in light of the Motion's frequent references to the Movants' contention that the records are "public records." ("As such, the documents Time Warner seeks to release are public

documents." Motion at p. 2) ("[I]t is subject to the provisions of the Public Records Act" Motion at p. 3).

6. Without question, the issue of whether a document is a public record is an issue vested exclusively with the Chancery Courts of Tennessee. (T.C.A. § 10-7-505(b)).

7. The TRA should not preempt the jurisdiction of the Chancery Court by taking any action at this time. Inasmuch as the Tennessee Supreme Court has recognized that the balancing process for determining whether a matter should be disclosed is affected by the public or private status of a litigant, (Ballard v. Herzke, 924 S.W. 2d 652, 658-659), the Authority should not proceed to release documents from the Protective Order until at least the conclusion of the proceeding in Chancery Court if the documents are to be released at all. The private nature of A&L is uncontested by Movants herein or by the Movant/Petitioner in Chancery Court. Memphis Networkx has asserted its private status and vigorously opposed the complaint filed in Chancery Court.

8. On April 27 and April 29, 2000, Applicant and Joint Petitioners made certain document productions. Among the documents produced are those that are the subject of this motion. Each document has been specifically designated in "good faith" to be "trade secrets, confidential research, development, financial statements or other commercially sensitive information" and each was "specifically designated as confidential by the producing party."

9. The Protective Order itself is a finding, concurred in by all parties, that good cause exists for the protection of documents within the category identified in the Protective Order.

10. The motion seeks to treat this case as one where no protective order is in place and argues what the terms of the order should be. This is not, however, a situation where a protective order is being requested and its requested scope being contested. A protective order has been

developed after considerable negotiation and the terms agreed upon by all parties. The Movants now want to rewrite the terms and ignore its restrictive language, after the producing party has relied upon its terms.

11. Tennessee law supports protection of all these documents. Contrary to the bald assertions of Movants, release of the information would cause irreparable harm and competitive disadvantage to the producing party as set out in the Affidavits contained in Confidential Attachment 4 to the July 3 Response of Applicant and Joint Petitioners. Loveall v. American Honda Motor Company, 694 S.W. 2d 937, 939. Personal financial information is appropriately protected under a protective order, Ballard v. Herzke, 924 S.W. 2d 652, 660 (Tenn. 1996). ("To protect the privacy interests of the defendants, Chancellor Peete maintained the seal of the Protective Order on the records pertaining to their personal income and taxes"). This argument specifically applies to Document Number AL-102. Non-party witnesses have full protection under Paragraph 14 of the Protective Order. Movant's reliance on cases (Vantage Technology, LLC v. Cross and Cam International, L.P. v. Turner) to enforce covenants not to compete is not persuasive because those cases are limited to former employees and are only illustrative of protected information, and do not purport to limit the range of protected documents.

12. It is likewise important to realize that many of the documents produced in this proceeding involve or affect financial or consulting organizations who did business or corresponded with the Applicant/Joint Petitioners. Indeed, there were non-disclosure agreements executed with those firms and public release of the documents would violate the trust underlying those business arrangements. Their rights and well founded expectations of the non- public status of documents affecting them should not be ignored or injured in this proceedings. See Affidavits contained in the

Attachment to the July 3 Response. This argument specifically applies to documents MN-24, MN-25, MN-26, MN-27, MN-28, MN-29, and MN-31.

13. Movants' request is not presented for the purpose of helping this proceeding to a prompt and just disposition. The Tennessee Regulatory Authority would not be assisted in its decision making nor the parties in presenting their cases by removing the protected status from these documents. The Protective Order provides explicitly that "TRA Directors and members of the staff of the TRA" have access. (Protective Order at Paragraph 3(b)). Counsel for all parties have access to these records. (Protective Order at Paragraph 3(a)). Documents under the Protective Order may be disclosed in testimony at the hearing so long as appropriate safeguards are maintained. (Protective Order at Paragraph 9).

14. If release does not benefit the TRA or other parties, who would benefit from release? The beneficiaries of release of these documents would be those explicitly prohibited from access to the records under the Protective Order, such as "anyone associated with the marketing of products, goods or services in competition with the products, goods or services of the producing party." (Protective Order at Paragraph 3). This would particularly apply to Documents AL-1, AL-3, AL-4, MN-24 through MN-29, and MN-31.

15. No court has found the records of Memphis Networkx, LLC or A&L Networks-Tennessee, LLC to be public records.

16. The Tennessee Supreme Court only four years ago examined the issue of the interaction between the Public Records Act and a Protective Order in a proceeding. (Ballard v. Herzke 924 S.W. 2d 652 (Tenn. 1996)). The Court said that documents protected under a Protective Order retain that status even if they are public records. Specifically, the Court said:

Tenn. Code Ann. §10-7-503(a) provides that governmental records shall be subject to public access, "unless otherwise provided by State law." In Appman v. Worthington, 746 S.W. 2d 165 (Tenn. 1997), we held that the Public Records Act does not authorize public inspection of documents in a criminal case that are exempt from discovery by Rule 16, Tennessee Rules of Criminal Procedure. We reasoned that the Rules of Criminal Procedure are the law of this State and therefore, are encompassed within the phrase "unless otherwise provided by State law." Accordingly, we concluded that materials exempt from discovery by the rules of criminal procedure are not subject to inspection under the Tennessee Public Records Act.

The same reasoning applies in this case. The Rules of Civil Procedure are the "law" of this state. Tennessee Department of Human Services v. Vaughn 595 S.W. 2d 62 (Tenn. 1980). The protective order therefore was entered pursuant to "State law." Accordingly, documents sealed by the protective order are not subject to inspection under the Tennessee Public Records Act. 924 S.W. 2d at 662.

17. Whether or not documents have been produced in response to a Public Records Act request, their status under a protective order is unchanged under Tennessee law. Thus, the Protective Order itself (as set out Paragraph 3 of this Supplemental Response) and case law in Tennessee treat the Public Records Act and protective orders as two separate governing documents recognizing that they serve very different purposes and the effect of each depends on the context of the proceeding.

18. It is evident from the statements of counsel that Movants seek release of these documents for purposes unrelated to this proceeding.

MR. COLLIER: Mr. Farris, is the request to lift the protective order for the purposes of having documents made public during the course of this proceeding? Or is it for those documents to be made public or fall outside of the protective order in another proceeding?

MR. FARRIS: They would not be used for purposes of this proceeding. That's not the purpose of using these documents.

(Pre-Hearing Conference of July 6 Transcript at 16)

That understanding was confirmed by the Pre-Hearing Officer.

MR. COLLIER: As far as the TRA making a decision as to whether or not these are public records, at the present time everyone who is a party in this action and those persons who are assisting counsel or the parties in this action have the opportunity through the protective order to view the documents and rely upon them and put them into evidence and cross-examine witnesses in the context of this proceeding. So as far as the interests of the TRA are concerned, the protective order is doing what it's supposed to be doing in allowing the parties to prepare their case.

I see this right now as a request, though, to take the documents outside of the proceeding to somewhere else, and I'm not sure whether that decision needs to be made prior to a hearing in this case. I could hear argument on it otherwise. But at this point I'm not sure that it's necessary to have a decision on that prior to the hearing – prior to a decision in this case on the application.

And what you're asking, Mr. Farris, may well be taken care of through the Chancery Court in Memphis.

(Transcript at 19-20)

19. The Movants' plea that they are requesting access to these documents on behalf of rate payers of MLGW, taxpayers of Memphis, or local government officials rings hollow. Those public groups have more fitting advocates for their causes. Further, their rights are presumably protected in a Chancery Court public records case. Moreover, courts have been especially cautious about release requests from competitors. United States v. United Fruit Company, 410 F.2d 553, 556 (5th Cir., 1969). Additionally, Tennessee courts have noted that there is a limited interest in free expression in information obtained through discovery. Loveall v. America Honda Motor Company, 964 S.W. 2d 937, 940 (Tenn. 1985).

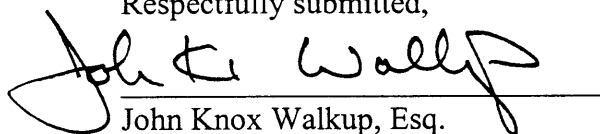
20. Moreover, as the Pre-Hearing Officer stated, the needs of the TRA are met by continuing the protected status of these documents. The TRA proceeding should not be used for other agendas of a party, especially when the Chancery Court of Shelby County is an available and appropriate forum, which the Movants have previously chosen.

21. The motion should be denied as unsupported in fact or law. The invitation to issue an advisory opinion on a matter unnecessary to a decision on the merits should be rejected.

22. Finally, the Applicant and Joint Petitioners request that witnesses on behalf of Applicant and Joint Petitioners be heard at any hearing on consideration of this matter so that a complete presentation of the specific need for protection of these documents can be made and that said hearing be closed pursuant to the Protective Order.

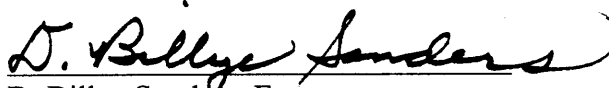
THEREFORE, for all the reasons set out herein, this motion should be denied, or in the alternative, a closed hearing with testimony by witnesses on behalf of Applicant and Joint Petitioners be held and following that hearing, the motion be denied.

Respectfully submitted,



John Knox Walkup, Esq.
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Attorney for A&L and
Memphis Networx, LLC



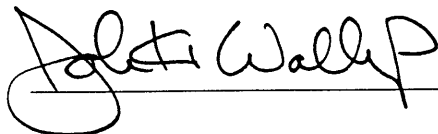
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(615) 244-6380

Attorney for MLGW and
Memphis Networx, LLC

CERTIFICATE OF SERVICE

I, John Knox Walker, hereby certify that on this 17th day of July, 2000,

a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail
postage pre-paid to the Counsel of Record listed below.

, Esq.

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Consumer Advocate Division

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC)

DOCKET NO. 99-00909

PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes regarding confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development, financial statements or other

commercially sensitive information, and which has been specifically designated by the producing party. A "Producing Party" is defined as the party creating the Confidential Information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order, and shall be stored, protected, and maintained at the law offices of parties' counsel of record until such time that said material shall be returned, as provided for in Paragraph 17. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 12 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties who are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be used only for the purposes of this proceeding, and shall be expressly limited and strictly disclosed to the following persons:

- (a) counsel of record for the parties and other legal counsel, including in-house counsel, for the parties in this case and associates, secretaries, paralegals, and witnesses or consultants actively engaged in assisting counsel of record in this and the designated related proceedings;
- (b) TRA Directors and members of the staff of the TRA.

Under no circumstances shall any CONFIDENTIAL INFORMATION or copies thereof, be disclosed to or discussed with anyone associated with the marketing of products, goods or services in competition with the products, goods or services of the producing party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, or to any other person or entity that does not have a need to know for purposes of preparing for or participating in this proceeding. Whenever an individual, other than counsel, is designated to have access, then notice (by sending a copy of the executed affidavit) must be given to adversary counsel prior to the access being given to that individual and that individual, prior to seeing the material, must execute an affidavit that the information will not be disclosed and will not be used other than in this proceeding.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient employee or associate counsel who shall be bound by the terms of this Order.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing the documents this failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL, shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and the failure is not discovered in time to provide a five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing conference or at the Hearing on the merits may request designation of the documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or

during the Pre-Hearing conference or Hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Secretary of the TRA in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the Hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law

Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the Hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of the information during witness examinations so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge to protect the confidential nature of the information.

9. Except for documents filed with the Executive Secretary of the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record and returned to the producing party pursuant to Paragraph 17 of this Order.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of the party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to

this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose the information.

11. Joint petitioner, Memphis Light Gas & Water Division ("MLG&W"), is a local governmental entity. As a governmental entity, certain documents and records of MLG&W may be subject to public inspection as public records as required by applicable State law. Nothing contained herein shall be construed as a reclassification of any such public document, and the "Confidential" designation of any such document shall not affect its classification as a public record for the purposes of a public records request made pursuant to applicable procedures and state law.

12. Any party may contest the designation of any document or information as CONFIDENTIAL by filing a Motion with the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents, information or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge or a court orders otherwise. A Motion to contest must be filed not later than ten (10) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5) days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the merits for a ruling.

13. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. Nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer Advocate Division as expressed in T.C.A. § 10-7-504(a) titled *Confidential Records*, and T.C.A. § 65-4-118 titled *Consumer Advocate Division*.

14. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witnesses' designation of information as CONFIDENTIAL may be challenged under Paragraph 12 of this Order.

15. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

16. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

17. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the

filings, exhibits and other materials, within fifteen (15) days. Counsel who received the filings, exhibits and other materials, designated as CONFIDENTIAL shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the producing party.

18. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

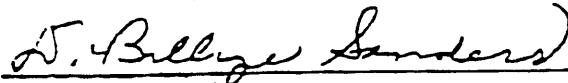
19. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

Richard Collier, Pre-Hearing Officer

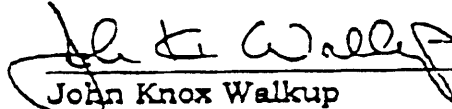
ATTEST:

K. David Waddell, Executive Secretary

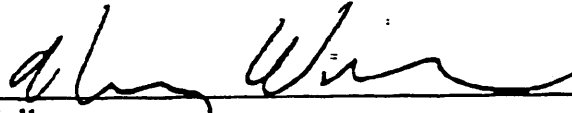
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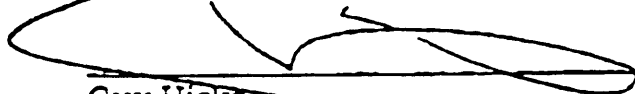
D. Billye Sanders
Attorney for Memphis Network, LLC and
Memphis Light Gas & Water Division



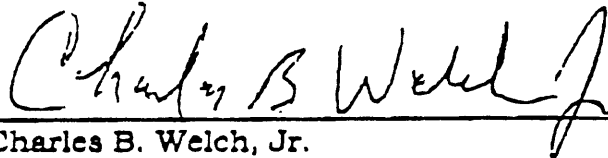
John Knox Walkup
Attorney for Memphis Network, LLC and
A&L Network-Tennessee, LLC



Henry Walker
Attorney for NEXTLINK Tennessee, LLC



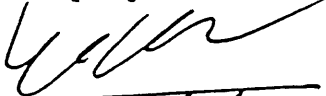
Guy Hicks
Attorney for BellSouth Telecommunications, Inc.



Charles B. Welch, Jr.
Attorney for Time Warner Telecom of the
MidSouth, L.P., Time Warner
Communications of the MidSouth, L.P. and
Tennessee Cable Telecommunications Association



R. Dale Grimes
Attorney for
Concord Telephone Exchange, Inc., Humphreys
County Telephone Company, Tellico Telephone
Company, Inc. and Tennessee Telephone Company



Lee S. Bloomfield
Attorney for IBEW 1288

AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, being duly sworn, deposes and says:

1. I am employed or retained by _____, who is a party in Docket No. 99-00909.

2. I have read the Protective Order of the Tennessee Regulatory Authority dated _____, 2000 respecting disclosure of Confidential Information. I agree to be bound by the terms thereof, including the requirements that the information not be disclosed and not be used other than in this proceeding and I understand that unauthorized disclosure of Confidential Information constitutes a violation of the Order and may subject me to an action for injunctive relief and/or damages.

FURTHER AFFIANT SAITH NOT.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2000.

NOTARY PUBLIC

My Commission Expires:

43146107.1
2/18/00 5:17 PM

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

TIME WARNER COMMUNICATIONS)
OF THE MID-SOUTH, L.P.)

Petitioner,)

v.)

No. CH 11-0706-3

CITY OF MEMPHIS, TENNESSEE,)
MEMPHIS LIGHT, GAS & WATER)
DIVISION, and MEMPHIS)
NETWORK, LLC,)

Respondents.)

PETITION FOR ACCESS TO PUBLIC RECORDS AND
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS

TO THE HONORABLE CHANCELLORS OF THE CHANCERY COURT OF SHELBY
COUNTY, TENNESSEE:

COMES NOW the petitioner, Time Warner Communications of the Mid-South, L.P., by counsel, and pursuant to the Tennessee Public Records Act, T.C.A. §§ 10-7-503 to 505, petitions this Court for access to certain public records and to obtain judicial review of the actions of officials of respondents, City of Memphis, Tennessee, Memphis Light, Gas & Water Division, and Memphis Network, in denying petitioner access to those records and states as follows:

- 1. Time Warner Communications of the Mid-South, L.P. ("Time Warner") is a foreign limited partnership authorized to do business and doing business in Memphis, Shelby County, Tennessee. Time Warner is a citizen of the State of Tennessee whose request to inspect public records under T.C.A. § 10-7-503 has been denied.

2. The City of Memphis, Tennessee ("City") is a municipal corporation organized and existing under the laws of the State of Tennessee. Memphis Light, Gas & Water Division ("MLG&W") is a division and thus an integral part of the City.

3. Memphis Networx, LLC ("Memphis Networx") is a joint venture between the City of Memphis thru MLG&W and A&L Networks-Tennessee LLC (A&L), organized to do business in the state of Tennessee and doing business in the State of Tennessee as a limited liability company. A&L Networks-Tennessee LLC is a Kansas limited liability company and is doing business in Shelby County, Tennessee. The City is a 50% joint venturer in Memphis Networx, has appointed a majority of its board members and has 53% of the financial rights and obligations of Memphis Networx.

4. Jurisdiction and venue are proper in this Court pursuant to T.C.A. § 10-7-505(b) as the public records sought are located in Shelby County, Tennessee.

5. The City and A&L organized Memphis Networx to facilitate the offering of telecommunications services by MLG&W in Memphis, Shelby County, Tennessee. Based upon information and belief, officials associated with MLGW exercise substantial management, direction, and control of Memphis Networx and in that process use public ratepayer funds. Herman Morris, MLGW President, Max Williams, General Counsel for MLGW and John McCullough, Vice President for Finance, all MLGW employees, represent the ratepayers' interest on the 5 person board.

6. MLG&W has paid and is continuing to pay bills, invoices, and statements incurred by Memphis Networx. These payments are being made directly from electric division funds and revenues received by MLGW from the ratepayers of Memphis, Shelby County, Tennessee, including Time Warner. As of December 31, 1999, the electric division of MLGW had lost over 2.1 million ratepayer dollars on its venture with A&L. As of December 31, 1997, A&L Underground, an affiliated entity of A&L, produced total net income of approximately \$320,000 and had a total net worth of

approximately 2 million dollars. Copies of statements reflecting this are attached hereto as Exhibits 1 and 2.

7. Time Warner has repeatedly requested that MLG&W inform the public of its reason for expending substantial time and public money investigating and preparing to offer telecommunications services in Memphis, Shelby County, Tennessee, and to tell its ratepayers (like Time Warner) what the risks are associated with such venture and doing business as a partner with A&L. MLG&W has not responded and based upon a review of the public record before the Memphis City Council and its own Board of Commissioners, there has been no presentation, discussion, or debate that would reasonably inform the public about the scope and terms of this proposal and the use of public ratepayer dollars. Copies of minutes of City Council meetings and MLG&W Board of Commissioners meetings are attached chronologically as Exhibits 3, 4, 5, 6, and 7.

8. On March 30, 2000, John Farris, on behalf of Time Warner, requested that MLG&W provide certain documents relating to Memphis Networkx and its telecommunications project. A copy of Time Warner's request is attached hereto as Exhibit 8. The documents sought pertain to reports, studies, business plans, receipts, disbursements, and other financial records relating to MLG&W's financial and managerial interest in Memphis Networkx. In response to the request, MLG&W provided certain documents to Time Warner. The documents produced are generally outlined in letters dated April 4 and April 7, 2000, from J. Maxwell Williams, Vice-President and General Counsel of MLG&W. Copies of these letters are attached hereto as Exhibits 9 and 10, respectively. Time Warner, through counsel, again verbally requested the remaining information and clarified the request to counsel for MLG&W on April

7, 2000 and counsel indicated that he would respond by Monday, April 10. MLGW has refused to make the information available to Time Warner.

9. The documents produced by MLG&W constitute only a small portion of the documents requested by Time Warner. MLG&W and Memphis Networkx refuse to produce all of the requested documents. Upon information and belief, the documents sought, but not provided, are in the possession of MLG&W, Memphis Networkx or even A&L.

10. Based upon information and belief, MLG&W and A&L have transferred certain documents responsive to Time Warner's request to Memphis Networkx or A&L. Also, based upon information and belief, Time Warner alleges that MLGW and A&L have changed their course of conduct over the last several months regarding the handling of information in an effort to place those documents beyond public access. Attached as Exhibit 11 is a copy of a document produced by MLGW which show payments to Memphis Networkx without supporting or underlying invoices or documents. Based upon information and belief, Time Warner alleges that MLGW is privy to such supporting information. Attached hereto as Exhibit 12 is an internal e-mail between MLG&W and A&L (Alex Lowe) in which efforts to shield certain documents from the public are discussed.

11. Time Warner, by letter dated April 11, 2000, again requested production of documents from MLG&W. A copy of Time Warner's request is attached hereto as Exhibit 13. The documents sought are reports, studies, and business plans relating to the need for additional telecommunications services in Memphis, as well as all financial records and accounting records, including backup and underlying documentation relating to MLG&W's financial

and managerial interest in Memphis Networkx.

12. Also, counsel for Time Warner was directed to counsel for Memphis Networkx, and told that MLGW did not have the documents being requested. Counsel for Time Warner then forwarded all prior requests to Memphis Networkx. Time Warner, by letter dated April 11, 2000, requested production of the documents from Memphis Networkx. A copy of Time Warner's request to Memphis Networkx is attached hereto as Exhibit 14. The documents sought are the same as those sought from MLGW as discussed in Paragraph 11. The documents sought by Time Warner from Memphis Networkx are public records subject to Tennessee's Public Records Act given the relationship and financial interest of MLGW and public ratepayers in Memphis Networkx.

13. MLGW and Memphis Networkx refuse to produce the records requested and have not responded promptly despite assurances to the contrary. Based upon information and belief, Time Warner alleges that MLGW and Memphis Networkx intend to delay the production of these documents until the Memphis Networkx application for a franchise to provide telecommunications services has been acted upon by the Memphis City Council.

14. The documents sought by Time Warner from MLGW, Memphis Networkx or A&L constitute public records under Tennessee law. No statutory exception to Tennessee's Public Records Act justifies non-disclosure. Thus, the denial of access to these public records constitutes a violation of Tennessee's Public Records Act, T.C.A. §§ 10-7-503 to 505.

15. MLGW and Memphis Networkx have willfully refused to allow access to public records in violation of Tennessee's Public Records Act, T.C.A. § 10-7-505(g). Therefore, Time Warner is entitled to recover its attorneys' fees and costs expended herein.

WHEREFORE, the petitioner, Time Warner Communications, prays that this Court:

1. Upon the filing of this petition, issue an order requiring respondents to immediately appear before this Court and show cause why this petition should not be granted as provided by T.C.A. § 10-7-505(b);
2. Grant petitioner a declaratory judgment that the records sought in its written requests are public records under Tennessee's Public Records Act and that the denial of access by respondents to these records is a violation of T.C.A. §§ 10-7-503 to 505;
3. Grant petitioner a judgment requiring respondents and A&L, if necessary, to immediately make, or cause to be made, the documents sought herein available for petitioner's inspection;
4. Grant petitioner its reasonable costs and attorneys' fees pursuant to T.C.A. § 10-7-505(g); and
5. Grant petitioner such further relief to which it may be entitled.

Respectfully submitted,

FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.
One Commerce Square
Suite 2000
Memphis, Tennessee 38103
(901) 279-7100

By: 

Robert A. McLean No. 6516

John M. Farris No. 10435

Garrett M. Estep No. 19078

Attorneys for Time Warner Communications

MEMPHIS LIGHT, GAS AND WATER DIVISION

Public Record Access and Notification

Request Form

If you are a citizen of the State of Tennessee, and request to view MLGW record(s) during business hours, you will be allowed to do so under the Tennessee Public Records Act, TCA 10-7-503.

Under the Public Access and Notification Policy of MLGW, the party involved will be notified of your desire to view records pertaining to them, and a copy of this request will be mailed to them. There will be a minimum cost of \$10 as well as \$1.50 per copy to defray our cost, which must be paid in advance. For the purpose of processing your request and notifying the party involved, the following information is requested:

Party to whom records pertain Memphis Network; A&L Underground;
A&L Network; MLGW
Address of record you want to see _____

Your Name John M. Farris Phone # 901-259-7100

Address Suite 2000 One Commerce Square Zip Memphis TN 38103

Tennessee Drivers License No. TDL# 47163846

Voter Registration Card #763900 Reg date 10-02-76

Reason of inquiry information

Organization or person represented _____

Specific records requested Audio tapes/transcripts of MLGW board of commissioners meeting
in 1999 and 2000 where telecommunication project discussed or approved.

All reports, business plans, studies and documents which relate to the need
for additional telecommunications services in Memphis. All
bank statements of Memphis Network. All financial records of MLGW.
I certify that I am a citizen of Tennessee and this information is not requested for resale or any commercial or illegal purpose.

Signature John M. Farris Date 3-30-00

* Which show receipts, disbursements or adjustments made that
relate to Memphis Network. All financial records of A&L which
show receipts, disbursements or adjustments made that relate to Memphis
all on a little studies or reports.

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

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v.)

CITY OF MEMPHIS, TENNESSEE,)
MEMPHIS LIGHT, GAS & WATER)
DIVISION, and MEMPHIS)
NETWORK, LLC,)

Respondents.)

No. CH 00-0706-3

FIAT AND SHOW CAUSE ORDER

TO THE CLERK AND MASTER:

Issue the following Notice of Hearing:

Set a hearing for April 20, 2000 at 9:00
requiring respondents to appear at that time and show cause, if
any, why this petition should not be granted.

Chancellor Lloyd P. [Signature]

Date: 4-14-00

Time: 10:25 AM

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A TRUE COPY - ATTEST
Kerney [Signature] Clerk & Master
By [Signature]
D.C. & M